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COMMITTEE ON APPLICATIONS FOR REVIEW OF
ADMINISTRATIVE TRIBUNAL JUDGEMENTS
Thirty-ninth session

INFORMATION CIRCULAR

I. DATE AND PLACE OF MEETING

1. The 1st meeting of the thirty-ninth session of the Committee on Applications for Review of Administrative Tribunal Judgements will take place at United Nations Headquarters on Monday, 30 March 1992. The exact time and place of the meeting will be announced in the Journal of the United Nations. The provisional agenda for the session is to be found in document A/AC.86/R.230.

II. MEMBERSHIP OF THE COMMITTEE

2. Under article 11 of the statute of the United Nations Administrative Tribunal (see General Assembly resolution 957 (X) of 8 November 1955), the Committee is composed of Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly. The present membership of the Committee therefore comprises the following 29 Member States: Australia, Belize, Botswana, China, Ecuador, France, Guinea, Honduras, Ireland, Italy, Libyan Arab Jamahiriya, Malaysia, Mozambique, Myanmar, Oman, Poland, Qatar, Russian Federation, Saint Lucia, Saudi Arabia, Thailand, Togo, Tunisia, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America and Zaire.

III. PREVIOUS MEETINGS OF THE COMMITTEE AND DECISIONS TAKEN

3. Information concerning previous meetings of the Committee and decisions of the Committee at its first to thirty-eighth sessions is to be found in documents A/AC.86/INF/1-37.

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4. At its thirty-eighth session, held on 9, 10 and 11 December 1991, the Committee considered the application of Mr. Kofi for review of Administrative Tribunal Judgement No. 519 - Kofi v. the Secretary-General of the United Nations.

5. On 9 and 10 December 1991, after consideration of the aforementioned application, the Committee decided that there was not a substantial basis for the application of Mr. Kofi under article 11 of the statute of the Administrative Tribunal and therefore concluded that the International Court of Justice should not be requested to give an advisory opinion in respect of Judgement No. 519.

6. The decision of the Committee at its thirty-eighth session was formally announced at the meeting of the Committee held in public on 11 December 1991. It is contained in document A/AC.86/48.

IV. PURPOSE OF THE SESSION

A. Application received from Mr. Gunnar Hallin

7. On 23 October 1991, the United Nations Administrative Tribunal rendered Judgement No. 531 in the case of Hallin v. the United Nations Joint Staff Pension Board. The official text of the judgement, in English and French, is to be found in document AT/DEC/531. The judgement was communicated to the parties on 24 October 1991.

8. The application from Mr. Hallin dated 15 November 1991, requesting a review of Judgement No. 531 rendered by the United Nations Administrative Tribunal in the case of Hallin v. the United Nations Joint Staff Pension Board was received by the Secretary of the Committee on 19 November 1991. It should be noted that at the time of the receipt of the application Mr. Hallin was informed by the Secretary of the Committee that in connection with his application the attention of the Committee would be brought to article 48, paragraph (c), of the Regulations of the United Nations Joint Staff Pension Fund. This paragraph, which relates to the jurisdiction of the United Nations Administrative Tribunal in cases of the applications alleging non-observance of the aforementioned Regulations, states that in such cases the decisions of the Tribunal shall be final and without appeal.

9. On 21 February 1992, after translation of the application of Mr. Hallin into the official languages of the General Assembly, it was communicated in document A/AC.86/R.214 to all members of the Committee as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of Administrative Tribunal Judgement No. 531 (AT/DEC/531).

10. Comments of the Respondent submitted with respect to the application of Mr. Hallin in accordance with article V, paragraph 1, of the rules of procedure of the Committee are contained in document A/AC.86/R.215.

B. Application received from Mr. Carlos Salinas

11. On 23 October 1991, the United Nations Administrative Tribunal rendered Judgement No. 530 in the case of Salinas v. the Secretary-General of the United Nations. The official text of the judgement, in English and French, is to be found in document AT/DEC/530. The judgement was communicated to the parties on 24 October 1991.

12. The application from Mr. Salinas dated 28 November 1991, requesting a review of Judgement No. 530 rendered by the United Nations Administrative Tribunal in the case of Salinas v. the Secretary-General of the United Nations, was received by the Secretary of the Committee on the same date.

13. On 21 February 1992, after translation of the application of Mr. Salinas into the official languages of the General Assembly, it was communicated in document A/AC.86/R.218 to all members of the Committee as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of Administrative Tribunal Judgement No. 530 (AT/DEC/530).

14. Comments of the Respondent submitted with respect to the application of Mr. Salinas in accordance with article V, paragraph 1, of the rules of procedure of the Committee are contained in document A/AC.86/R.219.

C. Application received from Mr. Mokhtar Bentaleb

15. On 4 November 1991, the United Nations Administrative Tribunal rendered Judgement No. 539 in the case of Bentaleb v. the Secretary-General of the United Nations. The official text of the judgement, in English and French, is to be found in document AT/DEC/539. The judgement was communicated to the parties on 5 November 1991.

16. The application from Mr. Bentaleb dated 16 December 1991, requesting a review of Judgement No. 539 rendered by the United Nations Administrative Tribunal in the case of Bentaleb v. the Secretary-General of the United Nations, was received by the Secretary of the Committee on the same date.

17. On 21 February 1992, after translation of the application of Mr. Bentaleb into the official languages of the General Assembly, it was communicated in document A/AC.86/R.220 to all members of the Committee as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of Administrative Tribunal Judgement No. 539 (AT/DEC/539). It should be mentioned that the application had attached to it four annexes, which have not been circulated since such circulation is not provided for in the rules of procedure of the Committee. Those documents may be examined in the office of the Secretary of the Committee (room S-3420I).

18. Comments of the Respondent submitted with respect to the application of Mr. Bentaleb in accordance with article V, paragraph 1, of the rules of procedure of the Committee are contained in document A/AC.86/R.221.

D. Application received from Mr. Amer Salih Araim

19. On 28 October 1991, the United Nations Administrative Tribunal rendered Judgement No. 533 in the case of Araim v. the Secretary-General of the United Nations. The official text of the judgement, in English and French, is to be found in document AT/DEC/533. The judgement was communicated to the parties on 29 October 1991.

20. The application from Mr. Araim dated 20 December 1991, requesting a review of Judgement No. 533 rendered by the United Nations Administrative Tribunal in the case of Araim v. the Secretary-General of the United Nations, was received by the Secretary of the Committee on the same date.

21. On 21 February 1992, after translation of the application of Mr. Araim into the official languages of the General Assembly, it was communicated in document A/AC.86/R.222 to all members of the Committee as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of Administrative Tribunal Judgement No. 533 (AT/DEC/533).

22. Comments of the Respondent submitted with respect to the application of Mr. Araim in accordance with article V, paragraph 1, of the rules of procedure of the Committee are contained in document A/AC.86/R.223.

E. Application received from Mr. Mohammed Al-Atraqchi

23. On 1 November 1991, the United Nations Administrative Tribunal rendered Judgement No. 538 in the case of Al-Atraqchi v. the Secretary-General of the United Nations. The official text of the judgement, in English and French, is to be found in document AT/DEC/538. The judgement was communicated to the parties on 1 November 1991.

24. The application from Mr. Al-Atraqchi dated 30 December 1991, requesting a review of Judgement No. 538 rendered by the United Nations Administrative Tribunal in the case of Al-Atraqchi v. the Secretary-General of the United Nations, was received by the Secretary of the Committee on the same date.

25. On 21 February 1992, after translation of the application of Mr. Al-Atraqchi into the official languages of the General Assembly, it was communicated in document A/AC.86/R.224 to all members of the Committee as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of Administrative Tribunal Judgement No. 538 (AT/DEC/538).

26. Comments of the Respondent submitted with respect to the application of Mr. Al-Atraqchi in accordance with article V, paragraph 1, of the rules of procedure of the Committee are contained in document A/AC.86/R.225.

F. Application received from Mr. Frank Ibarria

27. On 7 November 1991, the United Nations Administrative Tribunal rendered Judgement No. 541 in the case of Ibarria v. the Secretary-General of the United Nations. The official text of the judgement, in English and French, is to be found in document AT/DEC/541. The judgement was communicated to the parties on 8 November 1991.

28. The application from Mr. Ibarria dated 6 January 1992, requesting a review of Judgement No. 541 rendered by the United Nations Administrative Tribunal in the case of Ibarria v. the Secretary-General of the United Nations, was received by the Secretary of the Committee on the same date.

29. On 21 February 1992, after translation of the application of Mr. Ibarria into the official languages of the General Assembly, it was communicated in document A/AC.86/R.226 to all members of the Committee as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of Administrative Tribunal Judgement No. 541 (AT/DEC/541).

30. Comments of the Respondent submitted with respect to the application of Mr. Ibarria in accordance with article V, paragraph 1, of the rules of procedure of the Committee are contained in document A/AC.86/R.227.

G. Application received from Ms. Rasmille Fallah

31. On 12 November 1991, the United Nations Administrative Tribunal rendered Judgement No. 545 in the case of Fallah v. the Secretary-General of the United Nations. The official text of the judgement, in English and French, is to be found in document AT/DEC/545. The judgement was communicated to the parties on 12 November 1991.

32. The application from Ms. Rasmille Fallah dated 13 January 1992, requesting a review of Judgement No. 545 rendered by the United Nations Administrative Tribunal in the case of Fallah v. the Secretary-General of the United Nations, was received by the Secretary of the Committee on the same date.

33. On 21 February 1992, after translation of the application of Ms. Fallah into the official languages of the General Assembly, it was communicated in document A/AC.86/R.228 to all members of the Committee as well as to the parties to the proceedings before the Administrative Tribunal, together with a copy of Administrative Tribunal Judgement No. 545 (AT/DEC/545).

34. Comments of the Respondent submitted with respect to the application of Ms. Fallah in accordance with article V, paragraph 1, of the rules of procedure of the Committee are contained in document A/AC.86/R.229.

H. General provisions

35. The official dossiers of the Administrative Tribunal in the cases of Messrs. Hallin, Salinas, Bentaleb, Araim, Al-Atraqchi, Ibarria and Ms. Fallah are on file with the Secretary of the Committee in room S-3420I and may be examined on request by members of the Committee.

36. Under article 11, paragraph 2, of the statute of the Administrative Tribunal, the Committee shall decide within 30 days from receipt of each of the above-mentioned applications whether or not there is a substantial basis for such application. If the Committee decides that such a basis exists, it shall request an advisory opinion of the International Court of Justice. Under article 11, paragraph 4, the Committee is authorized by the General Assembly, for the purposes of the article, to request an advisory opinion of the Court. According to the provisions of article VII of the rules of procedure of the Committee, it shall be convened for the consideration of the application no later than 25 days from the date of the receipt of the application. Under subparagraph 1 (c) of article II of the same rules, the date of receipt by the Committee of an application is the date two weeks after the copies of the application are dispatched to the members of the Committee by its Secretary.

I. Other matters

1. Information related to the case of Mr. Upadhya

37. On 1 November 1991, the United Nations Administrative Tribunal rendered Judgement No. 537 in the case of Upadhya v. the Secretary-General of the United Nations. On 15 November 1991 an application from Mr. Upadhya (A/AC.86/R.216), requesting a review of Judgement No. 537, was received by the Secretary of the Committee. On 14 February 1992 Mr. Upadhya informed the Secretary of the Committee by a memorandum that he wished to withdraw his application to the Committee on Applications for Review of Administrative Tribunal Judgements as such withdrawal was part of an amicable settlement for all his claims against the Organization.

2. Information related to the case of Mr. Kioko

38. On 24 October 1991, the United Nations Administrative Tribunal rendered Judgement No. 532 in the case of Kioko v. the Secretary-General of the United Nations. On 16 December 1991 the Secretary of the Committee received an application from Mr. Kioko dated 3 December 1991, requesting a review of Judgement No. 532. In a cable dated 17 December 1991, the Secretary of the Committee drew the attention of Mr. Kioko to the fact that his application did not comply with the requirements to the application contained in article II, paragraph 2, of the rules of procedure of the Committee, in particular with its subparagraph (c) which provides that the application should set forth in detail the grounds of the application under paragraph 1 of article 11 of the

statute of the Administrative Tribunal and the supporting arguments. Mr. Kioko was informed by the cable that as provided for in paragraph 2 of article III of the rules of procedure of the Committee, with the approval of the Chairman of the Committee, the application was being returned to him with a request to correct it accordingly and resubmit it within three weeks from the date of return, which was 17 December 1991. In order to assist Mr. Kioko in preparing a corrected application as referred to above, he was also provided in the cable with the full texts of paragraph 1 of article 11 of the statute of the Administrative Tribunal and of paragraph 2 of article II of the rules of procedure of the Committee, containing the requirements for the submission of applications to the Committee. Further to the cable, on 17 December 1991 the Secretary of the Committee sent to Mr. Kioko copies of the rules of procedure of the Committee and of the statute of the Tribunal.

39. On 10 January 1992 the Secretary of the Committee received a letter from Mr. Kioko dated 3 January 1992. In the letter Mr. Kioko noted that he had not yet received the full text of the rules of procedure of the Committee and of the statute of the Administrative Tribunal and requested that he be given more time, another three weeks, to enable him to prepare an application after he had received the said documents. In reply to the letter, Mr. Kioko was informed on 10 January 1992 by cable by the Secretary of the Committee that all the relevant information regarding the conditions for the submission of an application to the Committee, including the citations from the respective provisions of the statute of the Administrative Tribunal and the rules of procedure of the Committee, was contained in the cable sent to him on 17 December 1991. Mr. Kioko was also reminded that he was supposed to resubmit his corrected application within three weeks from the date of return, in other words by 7 January 1992.

40. On 3 February 1992 a new letter, dated 21 January 1992, was received by the Secretary of the Committee from Mr. Kioko. That letter stated the following:

> "I acknowledge receipt of your cable of 13th January, 1992 with surprise and shock because your cable of 18th December, 1991 Paragraph 4 (c) said: The application does not specify under which the four grounds referred, in paragraph 1 of article 11 of the Administrative Tribunal it is being submitted. Therefore, as provided for 1 paragraph 2 article iii of the rules of Procedure of the Committee, with the approval of the Chairman of the Committee, I am returning the application to you with a request to correct accordingly and resubmit it within three weeks from the date of return which is 17th December 1991.
>
> "Paragraph 5, said the full text of the rules of procedure of the Committee and the statute of the Administration Tribunal have been sent to you today by mail.

"1. I understand that, you have said to me. I am returning the application to you with a request to correct it accordingly and resubmit it within three weeks from the date of return which was 17 December, 1991.

"2. I understand that, you have sent me the full text of Procedure of the Committee was to enable me to go through it (the text of rules of Procedure of the Committee) which I had never seen before.

"Before correcting it accordingly and resubmit it (Application) within three weeks ... which was 17 December, 1991.

"Sir, in your cable of 18th December 1991, you have not given me any warning concerning the time-limit.

"Sir, please, please, I respectfully request you to reverse the decision or if you do not have the authority, please, can you inform me whom I should request to reverse that decision or can you advise me what I can do next because it looks that you have closed my door completely.

"Thank you for the co-operation on this matter."

41. In a cable sent on 4 February 1992 by the Secretary of the Committee to Mr. Kioko in response to the above letter, Mr. Kioko was reminded that the cable sent to him on 17 December 1991 made it clear that all necessary information concerning the requirements for the submission of applications to the Committee had been included in that cable. The attention of Mr. Kioko was also drawn to the fact that if information concerning the aforementioned requirements had been sent to him by mail, obviously, he would not have been able to submit a corrected application within three weeks, because regular mail would have taken a longer time to reach him. As far as the question of the extension of the time-limit for submission of applications to the Committee is concerned, in a cable of 4 February 1992 Mr. Kioko was informed that at its thirty-seventh session the Committee had considered that issue and concluded that it had no power to waive or extend the time-limit laid down in article 11 of the statute of the Administrative Tribunal. The text of the cable sent to Mr. Kioko on 4 February 1992 had been cleared with the Chairman of the Committee.

V. TERMS OF REFERENCE AND RULES OF PROCEDURE

42. The terms of reference of the Committee are contained in article 11 of the statute of the United Nations Administrative Tribunal. That article was added to the statute by General Assembly resolution 957 (X) of 8 November 1955. Its text is as follows:

"Article 11

"1. If a Member State, the Secretary-General or the person in respect of whom a judgement has been rendered by the Tribunal (including anyone who has succeeded to that person's rights on his death) objects to the judgement on the ground that the Tribunal has exceeded its jurisdiction or competence or that the Tribunal has failed to exercise jurisdiction vested in it, or has erred on a question of law relating to the provisions of the Charter of the United Nations, or has committed a fundamental error in procedure which has occasioned a failure of justice, such Member State, the Secretary-General or the person concerned may, within thirty days from the date of the judgement, make a written application to the Committee established by paragraph 4 of this article asking the Committee to request an advisory opinion of the International Court of Justice on the matter.

"2. Within thirty days from the receipt of an application under paragraph 1 of this article, the Committee shall decide whether or not there is a substantial basis for the application. If the Committee decides that such a basis exists, it shall request an advisory opinion of the Court, and the Secretary-General shall arrange to transmit to the Court the views of the person referred to in paragraph 1.

"3. If no application is made under paragraph 1 of this article, or if a decision to request an advisory opinion has not been taken by the Committee, within the periods prescribed in this article, the judgement of the Tribunal shall become final. In any case in which a request has been made for an advisory opinion, the Secretary-General shall either give effect to the opinion of the Court or request the Tribunal to convene specially in order that it shall confirm its original judgement, or give a new judgement, in conformity with the opinion of the Court. If not requested to convene specially, the Tribunal shall at its next session confirm its judgement or bring it into conformity with the opinion of the Court.

"4. For the purpose of this article, a Committee is established and authorized under paragraph 2 of Article 96 of the Charter to request advisory opinions of the Court. The Committee shall be composed of the Member States the representatives of which have served on the General Committee of the most recent regular session of the General Assembly. The Committee shall meet at United Nations Headquarters and shall establish its own rules.

"5. In any case in which award of compensation has been made by the Tribunal in favour of the person concerned and the Committee has requested an advisory opinion under paragraph 2 of this article, the Secretary-General, if satisfied that such person will otherwise be handicapped in protecting his interests, shall within fifteen days of the decision to request an advisory opinion make an advance payment to him of one third of the total amount of compensation awarded by the Tribunal

less such termination benefits, if any, as have already been paid. Such advance payment shall be made on condition that, within thirty days of the action of the Tribunal under paragraph 3 of this article, such person shall pay back to the United Nations the amount, if any, by which the advance payment exceeds any sum to which he is entitled in accordance with the opinion of the Court."

43. At its 1st meeting, on 16 October 1956, the Committee adopted its rules of procedure which were later amended on 25 October 1956, 21 January 1957, 11 December 1974, 16 February 1983 and 30 July 1991. The current text of the rules of procedure of the Committee is contained in document A/AC.86/2/Rev.4.

44. In accordance with article VIII of the rules of procedure of the Committee all its deliberations, including the adoption of all decisions concerning applications, shall take place in private. The decisions of the Committee and the text of any questions to be addressed to the International Court of Justice, as well as the results of and the participants in any votes taken during the private deliberations, shall be formally announced in a public meeting, at which any member of the Committee may make a statement for the record. As provided in article XII of the rules of procedure of the Committee, sound recordings shall be prepared and kept of all proceedings of the Committee, in accordance with the practice of the United Nations. If the Committee requests an advisory opinion of the International Court of Justice in respect of an application, the Secretary, in accordance with paragraph 2 of article XII of the rules of procedure, shall prepare and transmit to the Court, to all members of the Committee and to the parties to the proceedings before the Administrative Tribunal, a verbatim record, in English and French, of the proceedings of the Committee in respect of that application, except for those in the private deliberations provided for in paragraph 3 of article VIII.

VI. INQUIRIES

45. Inquiries may be addressed to the Secretary of the Committee, room S-3420I, extension 35347.